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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,238	09/17/2003	Eric Kolb	DEP-5156	3713

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EXAMINER	
REIMERS, ANNETTE R	
ART UNIT	PAPER NUMBER
3733	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/664,238	KOLB ET AL.	
	Examiner	Art Unit	
	Annette R. Reimers	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *27-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *27-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 January 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 8, 2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27-30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sevrain (US Patent Publication Number 2003/0229348), cited by applicant, in view of Brace et al. (US Patent Number 6,235,033), cited by applicant, further in view of Eberlein et al. (US Patent Publication Number 2001/0021851), cited by applicant.

Sevrain teaches various embodiments of a spinal fixation plate with two different sections that mate and each section has a bore formed to receive a bone anchor (see

figures 7-10) a bone anchor, e.g. 200, having a proximal head and a distal bone engaging portion, the proximal head having a generally smooth outer surface for mating with the generally smooth radially interior surface of a polyaxial bushing (see figures 8A-8B). Sevrain teaches that the two sections can adjust along a longitudinal axis of the plate, wherein the at least one bore of the first section and the at least one bore of the second section are positioned at opposing ends of the spinal fixation plate and the at least one bore of the first section has a first bore axis and the at least one bore of the second section has a second bore axis that intersects the first bore axis on a side of the spinal fixation plate distal to the first and second vertebrae (see figures 7-10). Furthermore, Sevrain teaches a dynamic connection mechanism with a pin, e.g. 218, and slot, e.g. 232, (see figures 7-10 and paragraph 0062). Sevrain discloses the claimed invention except a polyaxial bushing Brace et al. disclose a polyaxial bushing, wherein the bushing has a slot, e.g. 28a, to permit radial expansion of the bushing, and the bushing has a plurality of ridges, e.g. 30, formed on a radially outer surface of the bushing and a generally smooth radially interior surface (see figures 3-5). Brace et al. teach the use of a bushing to provide for proper angulation of the screw relative to the fixation device (see column 1, lines 40-42). Brace et al. further teach the use of ridges on the bushing to further increase the security of the bushing within the hole (see column 2, lines 29-33 and column 3, lines 61-64). Brace et al. disclose the claimed polyaxial bushing except for the interior passage of the polyaxial bushing tapering continuously from a distal end of the bushing to a proximal end of the bushing. Eberlein et al. disclose a polyaxial bushing, e.g. 36, having an interior passage that tapers, e.g.

at 62, continuously from a distal end of the bushing to a proximal end of the bushing (see figure 1) and teach continuous tapering to allow "a self-alignment of the bushing with respect to the screw head, when the head comes into contact with the bushing" (see paragraphs 0034 and 0035). It would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with a polyaxial bushing, in view of Brace et al., to provide for proper angulation of the screw relative to the fixation device. In addition, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with a polyaxial bushing having a plurality of ridges formed on a radially outer surface of the bushing, in view of Brace et al., to further increase the security of the bushing within the hole. Furthermore, it would have been obvious to one skilled in the art at the time the invention was made to construct the plate of Sevrain with a polyaxial bushing having an interior passage that tapers continuously from a distal end of the bushing to a proximal end of the bushing, in view of Brace et al. and further in view of Eberlein et al., to allow a self-alignment of the bushing with respect to the screw head, when the head comes into contact with the bushing.

Response to Arguments

Applicant's arguments with respect to claims 27-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER